

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:EEE:EB:QP3  
PLR-123446-20

Date:  
July 28, 2021

Entity A =  
Plan =

Sport S =  
\$b Range =  
c% =  
\$d =  
\$e =  
f% =  
g =

Dear \_\_\_\_\_ :

This responds to your letter of September 18, 2020, in which you request a private letter ruling on behalf of Entity A, which is represented to be exempt from tax under section 501(c)(6) of the Internal Revenue Code (Code), concerning whether the Plan satisfies the requirements of section 457(e)(12) and whether the adoption of and operation of the Plan in accordance with its terms is consistent with and in furtherance of Entity A's exempt purpose under section 501(c)(6).

The following facts and representations have been submitted under penalties of perjury in support of your request:

Entity A's purpose and mission is to promote enjoyment and involvement in Sport S. The purpose of the Plan is to incentivize Entity A's members to help improve Sport S by providing deferred compensation to those individuals who make substantial contributions to Entity A's mission. Potential participants include all active

non-employee members of Entity A, including members of its board of directors and overseas members.

The Plan sets forth activities that Entity A has identified as promoting its core objectives. Each activity is assigned a specified number of points, based on the impact that the activity has on meeting Entity A's objectives. Entity A may limit the number of points per year that participants may earn. A member of Entity A earns the number of points corresponding to the activities they perform. A member is eligible to participate in the Plan after earning a minimum number of points set forth in the Plan. The amount allocated to each participant's Plan account is based on the number of points earned by the participant in that year. However, Entity A will cap the total allocations made annually with an individual participant cap of between \$b Range, which will increase at a rate of c% per year. The intent of the individual participant cap (and the below described overall annual cap) is to ensure amounts paid under the Plan remain reasonable and that the Plan remains consistent with Entity A's objective going forward. Participants will vest in their account after one year of participation in the Plan, or, if earlier, upon death or disability.

Entity A or Entity A's designated representative will determine the amount of funds, if any, that it commits to the Plan on an annual basis. That amount will be based on factors such as revenues for the preceding year, projected revenues for the upcoming year, the anticipated future needs of Entity A for funds, and market issues impacting Entity A. The maximum initial plan commitment will be either \$d or \$e depending on Entity A's available resources and priorities at the beginning of the Plan year. Moving forward, the maximum annual commitment will be the higher of the initial plan commitment or f% of Entity A's average revenue for the past g years.

Entity A will annually purchase investments with a cost substantially equal to Entity A's commitment to the Plan. The investments, together with income from, and proceeds of, those investments will be property of Entity A and no Plan participant will have any interest in, or right to, the assets. A participant may choose the investments for their Plan account from among the investments available under the Plan, but the administrator is not required to follow the member's selection. Earnings will be periodically allocated to participants' accounts, based on the manner in which the amounts in each account were actually invested.

Plan participants will have no interest in any assets of Entity A. A participant may not assign or transfer any rights under the Plan, including the right to receive benefits.

A participant's retirement date under the Plan is April 1st following the year in which the participant attains a specified age under the Plan. Benefit payments will commence after a participant's retirement date or death. The Plan also provides for earlier withdrawals in the event of a severe financial hardship to the participant due to an unforeseeable emergency. Plan benefits are generally paid as monthly payments over a specified number of years. However, benefits are paid in a lump sum if, on a

participant's retirement date, the participant is disabled or if the participant's account balance does not exceed the applicable dollar limit in effect under section 402(g)(1)(B).

#### Rulings Requested

Based on the above representations, you request a ruling that the Plan satisfies the requirements of section 457(e)(12), and, thus, taxation of deferred compensation under section 457 will be inapplicable to the Plan. You also request a ruling that adoption of and operation of the Plan in accordance with its terms is consistent with and in furtherance of Entity A's exempt purpose under section 501(c)(6).

#### Applicable Law

Section 457 contains rules for the taxation of deferred compensation plans of state and local governments and tax-exempt organizations. If a plan complies with section 457, compensation deferred under the plan will not be included in income until the year it is paid or otherwise made available.

Section 457(e)(12) exempts a plan from section 457 if it provides nonelective deferred compensation for services not performed as an employee. The compensation shall be treated as nonelective only if all individuals with the same relationship to the payor (other than those who have not satisfied any applicable initial service requirements) are covered under the same plan with no individual variations or options under the plan.

Section 1.457-2(k)(1) of the Income Tax Regulations provides that the term plan does not include (and section 457 of the Code and §§ 1.457-2 through 1.457-11 of the regulations do not apply to) any nonelective deferred compensation plan under which all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship with the eligible employer are covered under the same plan with no individual variations or options under the plan as described in section 457(e)(12) of the Code, but only to the extent the compensation is attributable to services performed as an independent contractor. Section 1.457-11(b)(3) of the proposed regulations issued on June 22, 2016 (81 FR 40548) provide that a plan is not subject to section 457 of the Code if it is a plan described in section 457(e)(12) that provides only nonelective deferred compensation attributable to services not performed as an employee (for example, a plan providing nonelective deferred compensation attributable to services performed by independent contractors). For this purpose, deferred compensation is nonelective only if all individuals, other than those who have not satisfied any applicable initial service requirement, with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan. The notice of proposed rulemaking provides that taxpayers may rely on the proposed regulations.

### Analysis

Under the terms of the Plan, all active non-employee members of Entity A are eligible to participate in the Plan after earning a minimum number of points. Thus, all individuals (other than those who have not satisfied the applicable initial service requirement) with the same relationship to the payor are covered under the Plan, with no individual variations or options under the Plan. The amount of compensation provided under the Plan is determined under a uniform method that applies to all participants, and participants do not have any option as to the amount deferred. We, therefore, conclude that the Plan satisfies the requirements of section 457(e)(12) and that section 457 will not apply to the Plan.

Section 501(c)(6) exempts from federal income taxation business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The Plan is structured in such a way as to allow participation by only non-employee members, on equal terms, whose efforts contribute to Entity A's mission. The Plan accomplishes this by incentivizing non-employee members, including board members, to provide services that attract others to partake in or increase participation in Sport S. The benefits provided to non-employee members under the Plan for their services are directly tied to promotion of Entity A's mission and promotion of its industry.

Entity A has included compensation safeguards in the Plan, in particular, in the form of objective caps both on participant allocations and its overall funding. The Plan includes an individual participant annual cap of between \$b Range subject to a maximum increase of c% annually. The Plan also includes an overall cap based on the higher of the initial plan commitment amount or f% of Entity A's average revenue for the past g fiscal years. Entity A represents that adoption of these caps will ensure amounts paid under the Plan remain reasonable for the services provided. Entity A also represents that the Plan will remain consistent with Entity A's objectives moving forward.

Based on the Plan terms, Entity A's representations, and the facts presented, we conclude that adoption of and operation of the Plan in accordance with its terms is consistent with and in furtherance of Entity A's exempt purpose under section 501(c)(6).

No opinion is expressed or implied concerning the tax consequences of the proposed transactions under any other provision of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed or implied concerning whether any aspect of the proposed transactions results in private inurement to Entity A. No opinion is expressed or implied concerning the application of section 409A to the proposed transactions. Section 409A

has been designated as an area in which ruling letters will not be issued until the Internal Revenue Service resolves the issues through publication of a Revenue Ruling, Revenue Procedure, Regulations, or otherwise. See section 3.01(67) of Rev. Proc. 2021-1, 2021-1 IRB 1.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in section 7.01(16)(b) of Rev. Proc. 2021-1. This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See section 11.05 of Rev. Proc. 2021-1.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

Cheryl Press  
Senior Counsel, Qualified Plans Branch 4  
(Employee Benefits, Exempt Organizations, and  
Employment Taxes)

cc: